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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,962	03/26/2004	Clifton A. Alferness	11998.5USC8	7915
7590	03/09/2005			EXAMINER
Attn: Anna M. Nelson MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 03/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/809,962	ALFERNESS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Samuel G. Gilbert	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 18-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 18-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/26/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. Also, the applicant has a plurality of application having the same title, each application should have a unique title to aid in the examination process.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim calls for "interlocking strands" and "strands exhibit differential stretch". The specification talks about "Atlas knit" and "directional expansion properties" but not " interlocking strands" or "strands with differential stretch". In the art of knitting an "interlock" knit is well known as shown on pages 100 and 106 of "Fabric Forming Systems, 1982". The applicant's specification only sets forth an "Atlas knit" not an interlock stitch. Further, the specification indicates

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that the fabric has directional expansion and not the strands. The examiner believes that "directional expansion" is different than "differential stretch".

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The claim positively recites a combination of a jacket surrounding the heart which is non-statutory because human body portions are non-statutory.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by McMurray(5,339,657).

Claims 18-23 – McMurray teaches a mesh including interlocking strands forming a diamond pattern. It is the examiner's position that the diamond pattern provides a differential stretch. Any of the linear strands of the mesh can be considered a longitudinal axis. After the longitudinal axis is selected the strands crossing the longitudinal axis would be the diagonal axis. The applicant defines jacket on page 9 lines 16-21, this definition includes a net that is long enough to pass half way around the heart to apply constraining forces at least at diametrically apposing aspects of the heart. The mesh of McMurray is at least large enough to pass half way around a heart. The Knit strands are interlocking.

McMurray teaches the use of the net in fish nets(at least some of which would be large enough to contain an adult human's heart) which would be shaped to circumferentially surround the heart and being of a flexible material is adapted to be adjusted to the size required to perform the recited functions.

Each of the legs are formed by a plurality of fibers.

Claims 18 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Shibamoto(4,196,534).

Shibamoto teaches a knit bag of a size which is adapted to be secured to the heart and adjusted(by gathering excess material and suturing it together) and thereby constrain at least a lower portion of the heart. The bag is formed with interlocking strands which exhibit differential stretch, column 1 lines 65-68. The bag is capable of

circumferentially surrounding the heart. The label -3- at least partially coats the strands  
-2-.

Claims 18 and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Alfernness(5,702,343)

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Alfernness teaches an open mesh cardiac reinforcement device. By definition, Webster's Ninth New Collegiate Dictionary, pg 744, mesh is defined as including knit structure. It is the examiner's position that an open knit would exhibit differential stretch and have interlocking strands. It is generally accepted that knit material provides different stretchability in different directions.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 2,992,550 teachers a related knit structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenberg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert  
Primary Examiner  
Art Unit 3736

sgg